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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 20th February, 2020

No. 13/1/9715-HII(2)-2020/3167.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 45/2016, dated 17.01.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

LAKHVIR SINGH, S/O SHRI AJMER SINGH, VILLAGE PO KUBA HERHI, TEHSIL & DISTRICT S.A.S. NAGAR, MOHALI (Workman).

AND

1. PUNJAB STATE ELECTRICITY REGULATORY COMMISSION, SECTOR 34-A, CHANDIGARH THROUGH ITS SECRETARY.

2. PUNJAB EX-SERVICEMEN CORPORATION, S.C.O. NO. 80-90, SECTOR 34-A, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed by the Punjab State Electricity Regulatory Commission i.e. management No. 1 and in the last he was working under the direct control & supervision of M/s Punjab Ex-servicemen Corporation i.e. management No. 2. Management No. 1 changes various contractors but on the recommendation of management No.1 every contractor kept the workman in service continuously for 12 years on the post of Peon with effect from 04.10.2004. He had continuously worked without any break. His services were suddenly & illegally terminated on 13.07.2015 without complying with the provisions of the ID Act and rules made therein. At that time he was drawing ₹ 9,350/- per month as W.e.f. The workman had worked under the senior officers of management No.1 with full devotion and honesty and lastly he was working under Shri Ashok Bembi – Deputy Director (General Services). The said official was also taking his private & petty jobs from the workman in an unauthorised and wrong manner. When the workman objected to the same he was shown the door and was not allowed to join his duties with effect from 13.07.2015. The workman had worked continuously with management No.1 for more than 240 days.

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Management No.1 had not given one month's notice or pay in lieu thereof and any retrenchment compensation at the time of termination of his services. The management had also violated Section 25-G and 25-H of the ID Act. The workman had called upon management No.1 through demand notice to reinstate him in service with full back wages, continuity service and other consequential benefits within seven days from the date of issuance of the notice, failing which the workman shall be compelled to presume that his demand had not been conceded to and *mala fidely* rejected. The management had not complied with the provisions of the Minimum Wages Act, The Payment of Wages Act and The Bonus Act despite several complaints made to the management. The management was also not providing leaves with wages to the workman according to the Punjab Industrial Establishment National & Festival Holidays and Casual & Sick Leaves Act, 1965. The management had not issued any memo, charge sheet and did not conduct any inquiry before terminating the services of the workman in gross violation of principles of natural justice. The management had also not paid or offered notice pay in lieu of notice period or compensation to the workman. Juniors to the workman were retained in service. The management had violated the provisions of Section 25-F, 25-G and 25-H of the ID Act. Ultimately, it is prayed that the workman be reinstated with continuity of service, full back wages and all other applicable consequential benefits.

3. Management No.1 contested the case of the workman and filed written statement raising preliminary objection that the workman was not employee of the answering management. On merits, it is pleaded that the workman was appointed by the Punjab Ex-serviceman Corporation i.e. management No.2 and his services were provided by management No.2 to management No.1 on outsourcing basis. The answering management contacted labour contractors for providing services of Peons etc. and labour contractors provided the services of the workman as Peon and for the same answering management had not role in appointment of the workman with the labour contractors. The services of the workman were continuously provided by the labour contractors to the answering management for a period of 12 years. The services of the workman were not terminated rather his services were discontinued in the office of the answering management on 13.07.2015 as the workman was transferred to the office of Nagar Nigam, Bathinda by management No.2. As per records the then Deputy Director (General Services) found the workman committing many illegalities, indulging in divulging the confidential information of the answering management, misusing the office of the Member of the answering management with whom the workman was attached etc. and accordingly management No.2 on 10.07.2015 was requested to replace the workman in view of his being a habitual offender. The workman was lastly working under Shri Ashok Bembey – Deputy Director (General Services). The workman and other similarly placed workers had been working under the supervision of one caretaker who executes the duty of marking attendance and placement of duties of the workers within the office. The workman had filed a complaint under Section 25-T & 25-U of the ID Act before the Assistant Labour Commissioner, Union Territory Chandigarh submitting that he has been transferred to answering management to Nagar Nigam, Bathinda and requested to cancel his transfer order. Now the workman had changed its stand stating that his services were terminated. As the answering management had not terminated the services of the workman so question of giving any notice or paying any pay in lieu of notice does not arise. No violation of provisions of the Minimum Wages Act, Payment of Wages Act, Bonus Act etc. has occurred on the part of the answering management. The workman had never made any representation regarding any grievance in regard to violation of these acts. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. Management No.2 contested the case of the workman and filed written statement that the workman was engaged by management No.2 on contract basis with effect from 01.08.2013 *vide* appointment letter dated 01.08.2013 for employment with management No.1. An agreement dated 01.08.2013 was made between management No.1 and answering management for providing of Peon and Sweeper for a period of 01.08.2013 to 31.07.2014, which was further extended upto 31.07.2016. The services of the workman were never terminated by the answering management. The workman was transferred from management No.1 to Nagar Nigam, Bathinda *vide* letter No.1083/Tfr/PESCO dated 10.07.2015 but the workman did not join. Ultimately, it is prayed that the claim of the workman be dismissed.

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5. From the pleadings of the parties, following issues were framed :—

1. Whether there is no relationship of employer & employee between management No.1 and workman ? OPM-1

2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

3. Relief.

6. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, management No.1 examined Ms. Ruchy Dev–Deputy Secretary (Admn.) as MW1 and management No.2 examined Lt. Col. D.P.S. Waraich (Retd.)–Deputy General Manager (Security) as MW2. Learned representative for management No.1 & 2 closed the evidence.

7. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO. 1 & 2 :

8. Both these issues are taken up together to avoid repetition of discussion. In order to prove the case of the workman, learned representative for the workman has examined the workman as AW1, who deposed that he was appointed by management No.1 and in the last he was working under the direct control & supervision of management No. 2. Management No. 1 changed various contractors but on the recommendation of management No.1 every contractor kept him in service continuously for twelve years on the post of Peon with effect from 04.10.2004. He continuously worked without any break but his services were illegally terminated on 13.07.2015. He further deposed that at the time of illegal termination he was drawing wages of ₹ 9,350/-. He remained sincere and hard working throughout his service. He had worked for more than 290 days in each service period. Termination of himself by the management is illegal and in violation of provisions Section 25-F, 25-G & 25-H of the ID Act.

9. Learned representative for the workman has argued that the workman remained sincere and hard working through out his service. He was appointed by the management on 04.10.2004 but was terminated without complying with the provisions of the ID Act on 13.07.2015 which is illegal. He further argued that there exists employer & employee relationship between himself and management No.1. He prayed for reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, learned representative for management No.1 examined Ms.Ruchy Dev – Deputy Secretary, who deposed that the workman was working on outsource basis in the office of management No.1 as Peon and he was deployed by management No.2 as per terms & conditions of the agreement between management No.1 and 2. There is no relationship of employer & workman between management No.1 and the workman. As per record the workman was habitual offender and accordingly management No.2 was requested to replace him.

11. Further management No. 2 examined Lt. Col. D.P.S. Waraich (Retd.) – Deputy General Manager (Security), who deposed that an agreement dated 01.08.2013 was made between management No. 1 & 2 for providing peon and Sweeper and workman was appointed by management No. 2 on contract basis with effect from 01.08.2013 for a specific period. The services of the workman was transferred from Chandigarh to Nagar Nigam, Bathinda *vide* letter dated 10.07.2015. The services of the workman were never terminated by management No. 2.

12. Learned representative for management No.1 & 2 has argued that the services of the workman was not terminated by management No.1 & 2 rather he was transferred from one place to another. There exists no employer-employee relationship between management No.1 and workman. There is no violation of any provisions of the ID Act on the part of the management. He prayed for dismissal of the present industrial dispute.

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13. After giving my careful consideration to the rival contentions of both the sides, I find that it is nowhere denied that an agreement dated 01.08.2013 was made between management No. 1 and 2. Copy of agreement is Exhibit 'R1/1' and as per which the workman deployed by management No. 2 with management No. 1 on contract basis for a specific period and copy of the appointment letter Exhibit 'MW2/2'. As per averments of the workman he was not to allow to join the duty i.e. on 13.07.2015. He is sincere and hardworking but no reasons has been mentioned by the management for not allowing him to join duty. He is alleging the present case, the case of termination in violation of provisions of Section 25-F, 25-G & 25-H of the ID Act and seeking his reinstatement in service with all consequential benefits. Whereas as per oral as well documentary evidence on record, it is crystal clear that the workman was working with management No. 1 on outsource basis and deployed by management No. 2. Copy of appointment letter of the workman is Exhibit 'MW2/1'. As per the evidence of management No. 1 the workman was habitual offender. Perusal of the copy of memo No. 3683/85 dated 10.07.2015 Mark 'R1/4' clearly reveals that the management No. 1 has asked management No. 2 to replace the workman being a habitual offender.

14. Further MW2 clearly proved the appointment letter Exhibit 'MW2/2' and stated that as per clause 5 of the appointment letter, the services of the workman could be transferred at any place any point of time as per requirement. This fact is admitted by the workman during his cross-examination. As per Exhibit 'MX2/1' the workman moved representation to Chairman, Punjab Ex-serviceman, management No. 2 against transfer to Bathinda in which he has admitted himself working with management No. 2 and requested to cancel his transfer. Hence, transfer of the workman from Chandigarh to Nagar Nigam, Bathinda is duly proved. It is not the case of the workman that he joined at transfer place or reported to management No. 2 so it is proved on record that the workman has abandoned the job of his own by not joining his new place of posting.

15. The workman while filing the present industrial dispute had challenged his illegal termination but during his cross-examination he himself stated that he did not know whether his services have been terminated till date or not. He did not know whether he was transferred from Chandigarh to Nagar Nigam, Bathinda or his services were terminated. He cannot produce any letter or document *vide* which his services were terminated by management No. 1. He cannot reproduce any representation made by him to the Deputy Director as he was not allowed to enter into the office. Hence, from the evidence on record it is proved on record that the present case is not a case of termination rather the workman himself had not joined the new place of posting and the transfer order was passed by management No. 2. Further it is also proved on record that the workman was employed through outsource agency i.e. management No. 2 so there exist no relationship of employer-employee between management No. 1 and workman. Accordingly, both these issues are decided against the workman and in favour of the management.

RELIEF :

16. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(ANSHUL BERRY),

The 17.01.2020.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 24th February, 2020

No. 13/1/9716-HII(2)-2020/3280.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 82/2017, dated 16.01.2020 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

HARVINDER SINGH, V.P.O. DURALI, DISTRICT MOHALI (Workman).

AND

BAKSHI HOUSEKEEPING, HOUSE NO. 1480, PUSHPAK SOCIETY, SECTOR 49-B, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed as Driver on 01.05.2014 and remained in uninterrupted employment upto 03.07.2017 when his services were illegally & wrongly terminated by refusing of work. At the time of termination, he was drawing ₹ 9,670/- per month as wages. On 03.07.2017 the workman went to attend his normal duty but he was refused work by the management without assigning any reason and notice. The workman had lodged a complaint against the management for compensation of ₹ 1,35,000/- which could be a cause of termination. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The workman than served a demand notice dated 06.07.2017 upon the management but the management did not reply the same. The Conciliation Officer, Union Territory, Chandigarh was requested for his intervention into the matter but despite number of dates for amicable settlement the management refused to take the workman back on duty with continuity of service and full back wages. The management had also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Action of the management in terminating the services of the workman is illegal, wrong, motivated, against the principles of natural justice and unfair labour practice. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages as he remained unemployed during the period i.e. from the date of termination to till date.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the workman had not impleaded the necessary party i.e. his earlier employer M/s Kartik Security & Detective Agency, SCO No. 98, Phase–X, Mohali, Punjab who appointed the workman as Driver in the year 2011. On merits, it is pleaded that the workman was working as Driver with the management and was appointed in the year 2011 by M/s Kartik Security & Detective Agency, who was earlier contractor with Ryan International School, Sector 49-B, Chandigarh. The said agency/management had also issued ESIC card to his employees including the workman. The answering management had taken the contract with Ryan International School in the year 2014 and the services of the all the employees of earlier employer were continued as it is with the present management with the same ESIC cards, earlier issued to them by the earlier management and the answering management used to regularly deposit the amount of the employees in their respective card numbers.The workman was drawing salary of ₹ 9,670/- per month as wages. The answering management never terminated the services of the workman rather it had followed the instructions of the school authorities who issued letter to the management for termination of services of 10 Drivers and 10 Conductors so the services of the workman were terminated. The management had paid one month salary to all those Drivers and Conductors whose services were terminated but the workman did not approach the management despite receiving message from the management. Earlier the workman had filed a complaint dated 31.01.2017 for claiming the ESIC card and compensation of ₹ 1,35,000/- on account of treatment of his mother, against the management in which the management

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filed detailed reply. Thereafter the workman sought time for filing the objections against the reply filed by the answering management but he failed to file any objection so the said complaint was filed/closed *vide* order dated 29.08.2017. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written From the pleadings of the parties, following issues were framed :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW

2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Thereafter none appeared on behalf of the management as such the management was proceeded against *ex parte*. Learned representative for the workman closed the *ex parte* evidence.

6. I have heard learned representative for the workman and have gone through the file carefully. In order to prove the case, learned representative for the workman has examined the workman as AW1, who deposed that he was appointed as Driver on 01.05.2014 and remained in uninterrupted employment of the management upto 03.07.2017 when his services were terminated illegally by refusing work. At that time he was drawing ₹ 9,670/- per months as wages. On 03.07.2017 he went to attend his normal duty but he was refused work by the management without assigning any reason and notice. He had lodged a complaint against the management for compensation of ₹ 1,35,000/- which could be a cause of termination.

7. Learned representative for the workman has argued that the workman was appointed as Driver on 01.05.2014 and remained in the interrupted employment upto 03.07.2017. His services were illegally & wrongly terminated. He further argued that that the management had refused to work to him when he went to attend his normal duties. The management had violated Section 25-F of the ID Act. He prayed for reinstatement of the workman with continuity of service and full back wages.

8. After giving my careful consideration to the submissions of the workman, I find that the workman is alleging himself as Driver with effect from 01.05.2014 and his services were terminated on 03.07.2017 by refusing work by the management without any reason or notice. On the other hand, the management had appeared and filed written statement and later on proceeded against *ex parte*. Now it is for the workman to prove his own case by standing on his legs that he was appointed by the management but he simply tendered his affidavit and has not placed on record any document i.e. appointment letter, any document through which his working tenure i.e. from 01.05. 2014 can be proved. He has not placed on record any prove of salary that he was drawing ₹ 9,670/- per month as wages from the management. He has also not summoned attendance register in this manner the workman failed to prove that he has illegally terminated by the management rather he himself alleging that he lodged complaint against the management for compensation of ₹ 35,000/- this could be a cause of termination so without placing on record any document the workman miserably failed to prove this fact that he was employed under the management so question of termination of service does not rise. Accordingly, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . . .,
(ANSHUL BERRY),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

Dated : 16-01-2020.

Secretary Labour,
Chandigarh Administration.

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CHANGE OF NAME

I, Nittu, s/o Dharambir, # 2682, Dadumajra Colony, Sector 38 West, Chandigarh, have changed my name to Vikram Singh.

[119—1]

I, Raju, s/o Sh. Ram Dulare, Presently Residence of H.No. 3693, Sector 46-C, Chandigarh, have changed my name to Shiv Darshan.

[120—1]

नाम परिवर्तन

मैं, राकेश बाबू, सुपुत्र श्री छोटे लाल, # 730/9, सेक्टर 26, बीडीसी, चंडीगढ़, मैंने अपना नाम राकेश बाबू से बदलकर राकेश रख लिया है।

[121—1]

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